A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR
S.B. : HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
MISCELLANEOUS APPEAL NO. 744/2005

APPELLANTS:
Defendant No.3

M/s. Shivalik Power and Steel Pvt. Ltd., A company Incorporated under the Companies Act, 1956, having its registered office at,C-33, 3rd Floor, Ashoka Millenium Ring Road No.1, Rajendra Nagar Chowk, Raipur.

versus

Respondents Plaintiffs :

1) **M/s. Aujasya Agro Power Pvt. Ltd., Hyderabad, Through representative Shri Rajmal Jain, aged 59 Years, s/o. Shri Tejmal Jain, r/o. Ward No.15, College Road, Mahasamund, Dist. Mahasamund (CG).**

Respondents Defendants

2) **Shri Thakur Ajay Singh, Aged 59 years, s/o. late Shri Thakur Raghuraj Singh, r/o. C-11, Ist Floor Ashoka Millenium Ring Road No.1, Rajendra Nagar Chowk, Raipur, CG.**

3) **District Registrar, Office of the District Registrar, Raipur (CG).**

4) **The State of ChhattisgaThrough Collector, Mahasamund, Dist. Mahasamund (CG).**

PRESENT :

Mr. Kanak Tiwari, Sr. Advocate with Shri Prateek Sharma, Counsel for the appellant.
Mr. Ashish Shrivastava, Counsel for respondent No.1.
Mr. P.K.C. Tiwari, Sr. Advocate with Shri Shashi Bhushan, Counsel for respondent No.2.
Mr. Jitendra Nande, Panel Lawyer for respondents No.3 and 4/State.

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ORDER

(Dated 17/02/2006)

This appeal is directed against the order dated 11/05/2005 passed by the First Additional District Judge, Mahasamund, in Civil Suit No. 33-A/2005 (Aujasya Agro Pvt. Ltd. Vs. Thakur Ajay Singh and 3 others) whereby allowing the application filed by the respondent No.1/plantiff under Order 39, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, for grant of temporary injunction against the appellant and respondents No. 2 to 4.

2) Facts material for disposal of this appeal, in brief compass, are that plaintiff/respondent No.1 – Aujasya Agro Pvt. Ltd., filed a Civil Suit No.33-A/2005 on 05/02/2005 for specific performance of the contract against the appellant and respondents No. 2 to 4 on the pleading that Thakur Ajay Singh/respondent No.2 – owner of the suit land executed agreement to sell the suit land on 03/12/2004 in his favour and received an advance of Rs.3,00,000/- (Rupees three lakhs). Registered sale deed was to be executed in terms of the said agreement by 31/01/2005. Plaintiff/respondent No.1 invited objections against the said sale by issuing public notice in daily newspaper and in response to that Central Bank of India, main branch, Raipur raised its objection dated 19/01/2005 alleging that the suit lands have been mortgaged with the Central Bank of India by owner of the land as collateral security against agricultural loan. Some correspondence regarding dispute took place in

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between the plaintiff/respondent No.1 and respondent No.2. Thereafter respondent No.2 terminated the said agreement to sell and refunded the amount taken in advance along with interest

3) After termination of the agreement respondent No.2 sold the suit land to appellant. Plaintiff/respondent No.1 also filed an application under Order 39 Rule 1 and 2 read with Section 151 of the C.P.C.,. for issuance of injunction against the appellant and respondents No. 2 to 4. Appellant denied the claim of plaintiff/respondent No.1 and pleaded that respondent No.2 – Thakur Ajay Singh who executed the agreement to sell has cancelled the agreement and thereafter for consideration sold the suit land on 03/02/2005 in his favour by executing a sale deed. Sale deed has already been produced in the office of the District Registrar, Raipur, from where after registration it is to be handed over to him. Respondent No.2 Thakur Ajay Singh has pleaded that he was not knowing the fact that the land has been mortgaged by his predecessor with Central Bank of India. He cancelled the agreement to sale dated 03/12/2004 and also returned the amount taken in advance along with interest to plaintiff/respondent No.1 and thereafter for the same consideration he sold out the suit land on 03/02/2005 by executing a sale deed in favour of the appellant.

4) Although learned court below considered the fact that possession of the suit land has been handed over to the appellant on 03/02/2005 and sale deed has been executed, but in spite of that holding the principle of prima facie case, balance of

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convenience and irreparable loss in favour of the plaintiff/respondent No.1, allowed the injunction application and issued directions that respondent No.2 shall not sell or alienate the suit property. Appellant and respondent No.2 to 4 shall maintain status quo and no new construction should be made. Respondent No.3 shall not register and deliver the sale deed to appellant.

5) Appellant's contention is that after canceling the agreement to sale dated 03/12/2004 and after redeeming the property from Central Bank of India, owner of the property who is respondent No.2 has vide sale deed dated 03/02/2005 for consideration sold out the suit land to him and also delivered possession thereof to him. Appellant is in possession of the suit land under valid sale deed. Sale deed has already been submitted in the office of the District Registrar, Raipur for registration. Registration of the documents has been made by the Registrar and only it is to be handed over to the appellant. Agreement to sell in favour of plaintiff/respondent No.1 already cancelled by real owner does not give any right to get it performed and to restrain the appellant who is real purchaser in possession thereof to take fruit of it. Learned counsel for respondent No.2 also supports the contention of the appellant.

6) Per contra, learned counsel for respondent No.1 submits that the cancellation of agreement to sale is not valid and in case plaintiff/respondent No.1 succeeds, in absence of injunction if construction is made over the suit land it will create many problems.

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7) Admittedly, on 03/12/2004 when respondent No.2 and respondent No.1 entered into contract i.e., agreement to sell, the suit land was under mortgage with the Central Bank of India and the mortgage was done by real owner of the suit land towards security against loan, therefore, till the suit land is redeemed, it cannot be sold. Prima facie, it appears that on 03/12/2004 it was not permissible for respondent No.2 to enter into agreement to sell with respondent No.1. Admittedly, agreement to sale dated 03/12/2004 has been cancelled by respondent No.2 who after cancellation, returned the amount taken by him in advance along with interest to plaintiff/respondent No.1. It is also not in dispute that before executing the sale deed in favour of appellant by real owner/respondent No.2 on 03/02/2005, the loan taken from the Central Bank of India, has been cleared and the seller i.e., respondent No.2 has delivered possession of the suit land to appellant. It is also not in dispute that after execution of sale deed, same was handed over to the District Registrar, Raipur.

8) From all the above facts, prima facie, it appears that appellant after execution of sale deed for consideration purchased the suit land and is in possession of the suit land. Therefore, the suit land which is purchased by the appellant for consideration after execution of sale deed in his favour by real owner, has to suffer irreparable loss, if he is deprived of from taking fruit of it. It is evident that the balance of convenience and principal of irreparable loss do not find favour of plaintiff/respondent No.1. Therefore, no injunction could have been passed in his favour.

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10) In the result, the appeal is allowed. The impugned order passed by the lower Court is set aside.

Parties to bear their own costs.

Sd/-
V.K. Shrivastava
Judge

Raju